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October 17, 2008

VIA ELECTRONIC FILING

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 Twelfth Street SW
Washington, DC 20554

Re: *High-Cost Universal Service Support, WC Docket No. 05-337;*
Federal-State Joint Board on Universal Service, CC Docket No. 96-45

Dear Ms. Dortch:

ACS Wireless, Inc. ("ACSW") submits this letter to seek clarity in the application of the Alaska Native Region/tribal land exclusion from the interim cap on competitive eligible telecommunications carrier ("CETC") universal service fund ("USF") support adopted in the Commission's *Interim Cap Order*.¹ Smith Bagley, Inc. ("SBI") asked that the Commission issue a declaratory ruling on the scope of the exception in its Petition for Expedited Declaratory Ruling filed on August 1, 2008.² ("SBI") It suggested that the exception allows uncapped support for one line per household and capped support for all other household lines.³

ACSW strongly agrees with SBI that the text of the *Interim Cap Order* as well as accompanying statements show that the Commission intended to permit eligible CETCs to receive more support "uncapped" than they would at the capped level. If the exclusion is to remain in effect, the Commission should act as quickly as possible to confirm this interpretation. Delay in clarifying the exception is causing harm to rural consumers in Alaska Native Regions and tribal lands ("Covered Locations"). It is causing unnecessary uncertainty and confusion for providers who may want to elect the exception, and for USAC, who must administer it.

I. The Only Possible Reason the Commission Could Have Had in Adopting the Exception Was to Provide More Support to Qualifying CETCs than under the Cap

¹ See *In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, FCC 08-122 (May 1, 2008) ("*Interim Cap Order*").

² *In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Petition for Expedited Declaratory Ruling (August 1, 2008) ("*Petition*").

³ *Petition* at p. 1.

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ACSW agrees that evidence shows the Commission intended to provide more support, not less, to providers who qualified for the limited exception.⁴ The Commission's rules at Section 54.307 support that interpretation,⁵ as do specific Commissioner Statements praising the exception for the benefits it affords to providers serving Covered Locations.⁶ The statements, cited in the SBI Petition as well as previous ACSW comments,⁷ indicate that the Commissioners understood that Covered Locations would receive additional support if providers serving these areas elected the exception.

Alaska Native Regions/tribal lands are some of the most impoverished and underserved regions of the country. The *Interim Cap Order* cites "low penetration rates for basic telephone service" as the primary reason for granting an exception.⁸ Clearly, the Commission did not intend to actually *decrease* USF support to these underserved areas. That interpretation would reduce support for telecommunications services in underserved regions in direct conflict with the intent of the *Interim Cap Order*. ACSW concurs with SBI that the Commission designed the Covered Locations exception to protect the flow of USF support to areas most in need in contrast with capping, not to mention reducing, such support.

⁴ *Petition* at pp. 3-6.

⁵ *Interim Cap Order* at ¶ 33.

⁶ As Commissioner McDowell stated:

I support an exception for all of the providers serving tribal lands across the country, and Alaska Native lands – some of the most under-served parts of America. This limited exception will ensure that companies operating in these remote areas will continue to receive high-cost support to provide their services while we move toward a permanent solution.

Commissioner Copps agreed:

While I strongly disagree with the overall decision taken today, I am encouraged the majority added to their CETC cap two caveats that I have long deemed important. The Order excludes from the cap high cost support for CETCs serving tribal lands or Native Alaskan Regions. These areas are among the most underserved when it comes to telecommunications – both basic phone service and broadband. The Commission must continue to focus on ways to bring affordable services to these areas as their residents are equally deserving of the benefits that technology affords.

Commissioner Adelstein intended the same benefit:

I am also pleased that the Commission recognizes the unique nature of Tribal lands and Alaskan Native Regions, many of which face devastatingly low telephone penetration rates and high barriers to deploying advanced communications. A limited exemption should help maintain incentives for carriers to bring services to these hard-to-serve areas.

⁷ See *In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, ACS Wireless Ex Parte Filing (July 29, 2008) ("*ACSW Ex Parte*").

⁸ *Interim Cap Order* at ¶ 32.

With these goals in mind, ACSW interprets the exception to mean that each telephone number served by a CETC in a Covered Location should be treated as an "account."⁹ In this way, the Commission can direct uncapped support to each rural user in these areas, and afford full public safety, service and operational protections. Moreover, this approach is consistent with a numbers-based universal service contribution system in that it matches contributions made for every number with support for every number where the exception applies.

SBI's approach, though more complicated than a simple numbers-based system, would also provide USF support above the current cap, consistent with the Commission's intent. In the event that the Commission declines to adopt ACSW's numbers-based approach to the Alaska Native Regions/tribal lands exception, ACSW supports the ruling sought by SBI's Petition.

II. The Commission Should Expedite Ruling on the Exception's Scope

The Commission should clarify the exception's scope as soon as possible if the exception is intended to be part of long term reform. While the cap took effect over two months ago,¹⁰ the exception has been held up, and uncertainties surrounding the scope of the exception may be contributing to further implementation delays. The Commission has prevented these traditionally disadvantaged/underserved areas from receiving the intended benefits by delaying clarification.

Uncertainty over future USF support also has a direct impact on CETC build-out plans and service to customers. Alaska Native Regions/tribal lands, like other service areas that are eligible for USF support, do not produce revenue sufficient to cover capital expenditures and operating expenses that expand and improve telecommunications services. CETCs committed to providing quality service to these areas rely on predictable USF support. They cannot plan continued investments if they cannot predict future support with certainty.

Moreover, providers and USAC both need direction now on how to fill out and process USAC's Form 525 for high cost support. ACSW submitted a letter with its September 30, 2008 Form 525 Filing, opting to elect uncapped support, subject to a Commission interpretation of its order that 1) permits each telephone number to be considered as an individual account; 2) grants uncapped support to primary lines but capped support to secondary lines; or 3) creates another interpretation that does not diminish support below the level ACS would receive if it remained capped.¹¹ ACSW filed this letter because the exception could go into effect at any time and

⁹ *ACSW Ex Parte* at p. 2.

¹⁰ The *Interim Cap Order* became effective on August 1, 2008 after its July 2, 2008 Federal Register publication.

¹¹ See Attachment A.

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could be applied retroactively.¹² Providers should not be forced to second guess rule applications and should have certainty about what the rules mean.¹³

Also, the existing Form 525 does not request information needed to administer the exception. For example, the Form does not differentiate between the primary line and any other lines in a residential household. CETCs run the risk of misreporting and USAC cannot efficiently administer the program without clear guidance on how the Commission will apply the exception.

For all these reasons, the Commission should clarify the scope of the Alaska Native Regions/tribal lands exception if it intends to incorporate it into long term reform.

Respectfully submitted:

/s/
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¹² In fact, ACSW encourages the Commission to immediately take the necessary steps to obtain the OMB approval required to make the exception effective.

¹³ The Notice of Inquiry ("NOI") recently issued in WC Docket No. 05-195 demonstrates that the Commission has a clear interest in identifying and remedying problematic rules that could lead to inaccurate reporting and payments. *In the Matter of Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, Notice of Inquiry, FCC 08-189 (Sept. 12, 2008). On September 29, 2008, ACSW filed comments in response to that NOI identifying the Alaska Native Regions/tribal lands exception as an area where a clarification would strengthen management and oversight of the USF. By clarifying the scope of the exception, the Commission would address these concerns and increase the program's administrative efficiency.